

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jeremy X. Gerald,

Plaintiff,

v.

Gary Mohr, et al.,

Defendants.

Case No. 1:19-cv-00754

Judge Michael R. Barrett

ORDER

This matter is before the Court on the Magistrate Judge's December 20, 2019 Report and Recommendation ("R&R"). (Doc. 12). Proper notice has been given to the parties, including notice that they would waive further appeal if they failed to file objections to the R&R in a timely manner. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Plaintiff filed timely objections. (Doc. 14). The Magistrate Judge provided a comprehensive review of the record in the R&R and the same will not be repeated herein.

The Magistrate Judge recommends that Plaintiff be ordered to pay the full filing fee required to commence this action, as he is prohibited from proceeding *in forma pauperis* pursuant to the "three strikes" provision set forth in 28 U.S.C. § 1915(g). (Doc. 12). In his objections, he asserts that the R&R is based on his prior convictions "distant in time, as well as distant in geography" *i.e.*, ten years ago and the United States District Court for the Middle District of Florida. (Doc. 14, PageID 2). However, Plaintiff neither disputes that he had three prior actions dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted nor argues that he falls under the imminent danger exception to 28 U.S.C. § 1915(g). *Id.* Moreover, there is no time limit on Section

1915(g)'s three strikes provision. See 28 U.S.C. § 1915(g). Further, to the extent that Plaintiff argues that Section 1915(g) is unconstitutional, (Doc. 14, PageID 2-3, 5) he is incorrect. See *Wilson v. Yaklich*, 148 F.3d 596, 605 (6th Cir. 1998) (holding that “[b]oth as written and as applied in this case, § 1915(g) does not infringe upon the fundamental right of access to the courts.”).

Finally, the remainder of Plaintiff’s objections contain arguments relating to the merits of his case found in his complaint and attempts to amend that complaint. (Doc. 14, PageID 4-14). The Court declines to address the merits of this case until Plaintiff pays the fee required to commence this action.

In light of the foregoing, and having reviewed this matter pursuant to 28 U.S.C. § 636(b)(1), the Court **ADOPTS** the Magistrate Judge’s R&R. (Doc. 12). Accordingly, it is hereby **ORDERED** that Plaintiff’s Motion to Proceed *In Forma Pauperis* (Doc. 1) is **DENIED**, Plaintiff must pay the full \$400 fee required to commence his action within thirty (30) days, and Plaintiff is cautioned that any failure to pay the full \$400 within 30 days will result in the dismissal of Plaintiff’s action. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order will not be taken in good faith.

IT IS SO ORDERED.

s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT